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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/594,816	06/16/2000	Jonas Andersson	040071-079	1951

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EXAMINER

CHIANG, JACK

ART UNIT	PAPER NUMBER
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2642

DATE MAILED: 11/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/594816

Applicant(s)

J. Andersson E

Examiner

J. Chiang

Group Art Unit

2642

#5

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 6-16-00
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-19 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-19 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 3
- ☐ Interview Summary, PTO-413
- ☒ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

**CLAIMS**

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-3, 5-11, 13-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Clark et al. (US 6321070).

Regarding claim 1, Clark shows:

A driver (speaker in figs. 3-8, 12-13, 16-27);

An acoustic horn (i.e. 1216, 1207, 1226) having an acoustic impedance matched with impedances of an ear and the driver (figs. 11, 14; see also col. 7, lines 27-67, col. 8, lines 10-13).

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Regarding claim 5, Clark shows:

An acoustic horn (i.e. 1216, 1207, 1226) having an acoustic impedance matched with impedances of an ear and a driver (figs. 11, 14; see also col. 7, lines 27-67, col. 8, lines 10-13).

Regarding claim 7, Clark shows:

A body (100);

A driver (speaker in figs. 3-8, 12-13, 16-27);

An acoustic horn (i.e. 1216, 1207, 1226) having an acoustic impedance matched with impedances of an ear and the driver (figs. 11, 14; see also col. 7, lines 27-67, col. 8, lines 10-13), a large end of the horn (1104) extending to a position proximate an exterior surface of the body (100).

Regarding claims 2-3, 6, 8-11, 13-15, Clark shows:

The horn and its impedance matching (see comments in claim 1);

A plate (1204) which can be a part of the body (100);

A driving membrane (i.e. 1302);

The horn can be integrally formed with the body (see 100);

The telephone body (100) having an elongated shape;

A microphone (below 148).

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark.

Regarding claims 4 and 12, Clark shows a speaker assembly which usually have a membranes (i.e. 1302).

Clark differs from the claimed invention in that it does not explicitly mention that the membranes has a diameter less than 1 mm.

However, Clark does show that different speaker technology can be used (col. 1, lines 39-41). Further, from the present specification, pages 5 last paragraph, it discloses that the diameter of the membranes can be ranging from 1mm to 5mm, or even larger. In other words, there is no teaching of criticality for the specific claimed 1mm. Therefore, it would have been obvious for one skilled in the art to use any speaker technology as suggested by Clark, including the 1mm-diameter membranes, as long as the basic concept of providing an acoustic frequency response that is substantially independent of the placement of the speaker against the ear, such as a seal or unsealed ear placement of the speaker (see fig. 11 in Clark).

5. Claims 16-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark.

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Regarding claims 16-19, Clark shows the speaker assembly with a phone device.

Clark differs from the claimed invention in that it does not explicitly mention the application of the speaker assembly with devices like a PC, pager and PDA.

However, it is commonly seen that today's electronic device have multiple functions, such as a phone having a PC, pager and PDA functions etc., or phones, PC, pagers and PDA having a speaker function. This is shown by Yoshimoto (col. 8, lines 17-25).

Further, from the various applications claimed in the present application, such as the phone, PC, PDA, pager etc., it can also be seen that there is no teaching of criticality for any one particular environment. Therefore, it would have been obvious for one skilled in the art to use Clark's speaker assembly in the phone, or PC, or PDA etc. with/without the teaching of Yoshimoto. This is simply an intended use of Clark because a phone having a PC or PDA function would not change the operation of the speaker function.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack Chiang whose telephone number is 703-305-4728. The examiner can normally be reached on Mon.-Fri. from 8:00 to 6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Admad Matar, can be reached on (703) 305-4731. The fax phone number for the organization where this application or proceeding is assigned is 703-308-6306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-4700.

  
Jack Chiang  
Primary Examiner  
Art Unit 2642

## Recent Statutory Changes to 35 U.S.C. § 102(e)

On November 2, 2002, President Bush signed the 21st Century Department of Justice Appropriations Authorization Act (H.R. 2215) (Pub. L. 107-273, 116 Stat. 1758 (2002)), which further amended 35 U.S.C. § 102(e), as revised by the American Inventors Protection Act of 1999 (AIPA) (Pub. L. 106-113, 113 Stat. 1501 (1999)). The revised provisions in 35 U.S.C. § 102(e) are completely retroactive and effective immediately for all applications being examined or patents being reexamined. Until all of the Office's automated systems are updated to reflect the revised statute, citation to the revised statute in Office actions is provided by this attachment. This attachment also substitutes for any citation of the text of 35 U.S.C. § 102(e), if made, in the attached Office action.

The following is a quotation of the appropriate paragraph of 35 U.S.C. § 102 in view of the AIPA and H.R. 2215 that forms the basis for the rejections under this section made in the attached Office action:

**A person shall be entitled to a patent unless –**

**(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.**

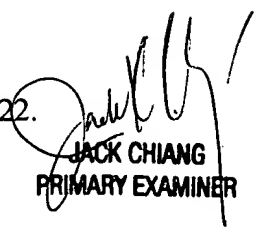
35 U.S.C. § 102(e), as revised by the AIPA and H.R. 2215, applies to all qualifying references, except when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. For such patents, the prior art date is determined under 35 U.S.C. § 102(e) as it existed prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. § 102(e)).

The following is a quotation of the appropriate paragraph of 35 U.S.C. § 102 prior to the amendment by the AIPA that forms the basis for the rejections under this section made in the attached Office action:

**A person shall be entitled to a patent unless –**

**(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.**

For more information on revised 35 U.S.C. § 102(e) visit the USPTO website at [www.uspto.gov](http://www.uspto.gov) or call the Office of Patent Legal Administration at (703) 305-1622.

  
**JACK CHIANG**  
**PRIMARY EXAMINER**